

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Rules and Policies Concerning)	MB Docket No. 04-256
Attribution of Joint Sales Agreements)	
In Local Television Markets)	
)	

COMMENTS OF RKM MEDIA, INC.

RKM Media, Inc. ("RKM"), the licensee of television broadcast station WNYS(TV), Syracuse, New York, by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, files these Comments in response to the Notice of Proposed Rule Making released by the Commission on August 2, 2004 in the above captioned matter ("*NPRM*").¹ These Comments respond only to the issues raised in Paragraph 21 of the *NPRM* regarding the termination of previously-grandfathered Local Marketing Agreements ("LMAs").² RKM is party to a grandfathered LMA and urges the Commission to maintain the current grandfathering period through the next Quadrennial Review of the Commission's television local ownership rules in 2006.

The *NPRM* seeks comment on whether the current grandfathering of pre-November 5, 1996 LMAs between same-market licensees should continue through the

¹ See *In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket No. 04-256, FCC 04-173 (rel. August 2, 2004) modified in part by *Order*, DA 04-2996 (rel. September 16, 2004)(extending the deadline for comments to October 27, 2004).

² *NPRM* at 21, citing *Review of the Commission's Regulations Governing TV Broadcasting, TV Satellite Stations Review of Policy & Rules*, 14 FCC Rcd 12903, 12964-66 ¶¶ 144-48 (1999) ("*Local TV Ownership Report and Order*"), clarified in *Memorandum Opinion & Second Order on Reconsideration*, 16 FCC Rcd 1067 (2001).

Quadrennial Review of the Commission's television local ownership rules in 2006.³ The grandfathering – which exempts qualified LMAs from attribution under the Commission's television duopoly rule – was originally set to expire at the conclusion of the 2004 Biennial Review of the broadcast ownership rules.⁴ The anticipated review of the Telecommunications Act of 1996 (the “1996 Act”) that was to occur in the 2004 Biennial Review was delayed until 2006 by an Act of Congress.⁵ Congress was aware in passing this legislation that during the 2004 Biennial Review the Commission would re-evaluate these grandfathered TV LMAs, deliberate on their public interest value, and determine whether the public interest benefits justified continued grandfathered status. However, Congress appears to have remained silent in the legislation on the issue of when the Commission should deliberate and decide these issues. The fact that the legislation was silent on “when,” does not support a conclusion that Congress intended the Commission to accelerate the termination of all grandfathered LMAs by skipping altogether a reasoned analysis of the public interest benefits recognized by Congress in the 1996 Act.

Indeed, Congress has long expected a thoughtful re-evaluation of the Commission's television local ownership rules, which should necessarily include consideration of the valuable public interest benefits of certain LMAs under justifying circumstances. Congress expected the Commission to review its rules adopted under Section 202 of the 1996 Act and all of its ownership rules biennially. In its review, the Commission was to determine whether any of its ownership rules are necessary in the public interest as the result of

³ See *NPRM* at 21.

⁴ *Id.*

⁵ See Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, §629, 118 Stat. 3 (2004).

competition. Based on its findings in such a review, the Commission was directed to *repeal* or *modify* any regulation it determines is no longer in the public interest. The 1996 Act's Joint Explanatory Statement of the Committee of Conference clearly recognizes the positive public interest benefits of LMAs and made clear that the 1996 Act was not intended to terminate such benefits to the public:

Subsection (g) grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the ***positive contributions*** of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with Commission regulations on the date of enactment. [Emphasis added.]⁶

The Commission correctly recognized that all grandfathered LMAs are not equal. Some LMAs produce valuable public interest benefits; other LMAs may not. The Commission's planned 2004 Biennial Review was intended among other things to identify those LMAs which produce valuable public interest benefits justifying an exemption from the television duopoly rule, and to eliminate and prevent those LMAs that do not. The 2004 Biennial Review was the appropriate time in which to undertake this review, as the factors to be considered – such as “extent to which broadcasters involved [in grandfathered LMAs] have fostered the regulatory goal of promoting localism” or “increased the amount and investment in children's educational programming” – are factors that interface with the broader policy issues of the television local ownership rules and policies, and require a broader fact-based context for appropriate review and

⁶ See Joint Explanatory Statement of the Committee of Conference on the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

judgment. To terminate the grandfathering without such a review would run contrary to Congressional intent and the original purpose of the grandfathering, which was to ensure that those grandfathered LMAs that created valuable public interest benefits were not arbitrarily and capriciously terminated and the public unnecessarily deprived of those benefits.

For these reasons, the Commission should maintain the current grandfathering period to permit a reasoned consideration of the valuable public interest benefits of certain LMAs involving licensees in the same market during the long-anticipated review of the Commission's television local ownership rules in the 2006 Quadrennial Review. In the event that the Commission decides to terminate all the grandfathered LMAs before the 2006 Quadrennial Review, RKM respectfully requests a reasonable time period for divestiture, not less than 180 days from date when the end of the grandfathering becomes effective and is final. A reasonable divestiture period would permit affected television licensees to avoid economic harm and to avoid injury and disruption to the television viewers they serve.

Respectfully submitted,

RKM MEDIA, INC.

By:


Julian L. Shepard
Mark Blacknell

Williams Mullen, A Professional Corporation
1666 K Street, N.W., Suite 1200
Washington, DC 20006-1200
(202) 833-9200
Its Attorneys

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